THE CONTROVERSY OVER THE SYRO-ROMAN CODE

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The singular code of laws dating from the fifth century of the Christian era, which was edited and translated by Eduard Sachau and interpreted from the point of view of comparative and historical jurisprudence by K. G. Bruns thirty years ago,[1] has Roman law as its basis, but contains besides a number of legal decisions which are either not to be found in Roman law or which directly contradict it.

Whence come then the non-Roman elements of this code? The answer to this query called forth a controversy which later spread into the neighboring domain of Armenian law and which after a short truce has now commenced anew. It is this circumstance which induces me to set forth the past history of this controversy. For the controversy now beginning, although it will be decisive for the Syro-Roman Code, must nevertheless be fought out on different ground. Thus my review will serve at the same time as an introduction to the new phase of the controversy.

The chief participants in this literary wrangle about the Syro-Roman Code are the Romanist L. Mitteis of

[1] *Syrisch-römisches Rechtsbuch aus dem 5. Jahrhundert...herausgegeben, übersetzt und erklärt von K. G. Bruns und Ed. Sachau,* Leipzig 1880.

Leipzig and the Orientalist D. H. Müller of Vienna. The former explains the non-Roman elements of the Code from Greek law, while the latter makes them subject to Oriental influence. Yet this is not a conflict between Romanism and Orientalism, since famous students of Roman law also have declared themselves with more or less decisiveness in favor of Oriental influence. Indeed it was a student of Roman law who first traced the influence of Oriental law in the Syro-Roman Code: K. G. Bruns, the commentator of the Code.

Bruns states: "The code as a whole contains only Roman law. The few deviations from known maxims, which are found therein, are mostly based either on sources unknown to us or on misunderstandings or on a different conception of the known legal maxims, but only a few embody independent legal statutes as they were developed in provinces. The only portion of the system which evinces a thorough diversity of basic principles as contrasted with the Roman law is the law of intestate inheritance."[2] This system of inheritance which must have been derived "from a source quite foreign to the Roman" he attempted to compare with the Jewish law of inheritance, but without satisfactory result. He assumed therefore that the whole particularism of this law of inheritance rests on old Syrian common-law.[3]

About ten years later Mitteis, in his "Reichsrecht,"[4] attacked the problem of the Syro-Roman Code and formulated the thesis that a great many of its legal notions are derivable from ancient Greek law "and that in its non-

[2] *Syr.-röm. RB.*, p. 302.

[3] *L. c.*, p. 316.

[4] *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreiches*, Leipzig 1891.

Roman elements which are far more numerous and important than was assumed by Bruns it is preeminently of Greek origin."[5]

In opposition to this thesis, K. Voigt declared himself in 1893 in favor of the Mesopotamian origin of the Syrian particularism,[6] but without going deeper into the question.

Thus the arguments were exceedingly disparate. On the one hand a systematic demonstration, on the other mere assumptions and opinions. It looked therefore as though the hypothesis of Mitteis had won the victory. Indeed it remained unattacked for a full decade, until 1903, when it began to totter rapidly through an energetic advance from the Orientalist line.

In that year D. H. Müller published his book on the Laws of Hammurabi,[7] in an appendix[8] to which he established a series of relations between the Syro-Roman Code and the Code of Hammurabi, invalidating to a large extent the arguments of Mitteis in favor of a Greek origin.

With this the real fight began: evidence was produced against evidence with vivacity and promptness, attack followed upon attack; both combatants received also more or less effective succor. Thus soon after the appearance of Müller's book on Hammurabi, K. Wessely, who stands preeminent in his knowledge of the Greek papyri, declared: "The internal evidence certainly speaks in favor of Müller's demonstration on p. 275 ff. that those passages of the Syro-Roman Code which find no adequate explana-

[5] *Reichsrecht*, p. 30.

[6] *Berichte der sächsischen Gesellschaft der Wissenschaften*, 1893, p. 210 ff.

[7] *Die Gesetze Hammurabis und ihr Verhältnis zur mosaischen Gesetzgebung sowie zu den* XII *Tafeln*, Wien 1903.

[8] P. 275-285.

tion in Roman law evince traces of influence of the old Semitic laws, by no means traces of Greek law in its process of development."[9]

Against Müller's attacks Mitteis defended his hypothesis in an article in the *Savigny Zeitschrift,*[10] to which Müller answered in a larger treatise printed in the *Wiener Zeitschrift für die Kunde des Morgenlandes.*[11]

In these two articles the chief battle was fought, although the war did not come to a final conclusion, and even subsequently skirmishes took place along the lines of pursuit and retreat.

In his book on Hammurabi, Müller took cognizance only of the influence of the Code of Hammurabi on the Syro-Roman Code, and hence he omitted any discussion of the system of *intestate succession* in the latter code, waiting for a more thorough investigation of the cuneiform documents, since the Code of Hammurabi itself contains no ordinances concerning a graded order of heirs. The precariousness of this situation could naturally not escape such a skilful strategist as Mitteis. He shifted therefore the point of gravity of the controversy straightway to the inheritance system and called on Müller to attack this point: "This point must be attacked by anyone who places the Oriental influence in the foreground; and it is just this point, which alone is decisive, that Müller has ignored."[12]

[9] *Zeitschrift für die österreichischen Gymnasien,* 1904, p. 143.

[10] *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte,* XXV, 1904, Romanistische Abt., p. 284-297.

[11] Band XIX, p. 139-195, reprinted separately under the title: *Das Syrisch-römische Rechtsbuch und Hammurabi,* Wien 1905.

[12] *Zeitschrift der Savigny-Stiftung,* XXV, p. 293.

Müller accepted the challenge and undertook this attack, destroying point after point the proofs of Mitteis in favor of the Greek origin of the Syrian inheritance system. To characterize the arguments and demonstrations on both sides only the weightiest points may be here briefly summarized:

1. As first and most important agreement Mitteis points out the connection between agnatic and cognatic succession, which is found in both the Attic and the Syrian legal systems, but in no other contemporary system of laws, the Jewish law in particular disclaiming it in no dubious terms.

Against this claim Müller points out that the connection between the two inheritance systems did exist originally in Jewish law, and was only subsequently removed from legal practice on account of political and religious motives; that cognatic succession was still demanded by some older Talmudic authorities and formed the prevailing legal practice among the Karaites, whose traditions coincide in many ways with those of the Sadducees.

2. The second demonstration concerns the order of kinship. Here Mitteis, to establish agreement with the Attic order of succession, had to submit the Syrian inheritance law to considerable manipulation; for the latter differs substantially from the Attic system:

a. "According to the Syrian law, daughters and sisters inherit together with sons and brothers; according to the Attic law, the former inherit after the latter.

b. According to the Syrian law, the mother inherits side by side with the sons and daughters; in

the Attic law of succession no mention is made of the mother.

c. The Syrian law excludes the descendants of the daughters and sisters from the agnatic lines and relegates them behind these, where they form two independent classes with the right of precedence over the aunts and the whole of the remaining cognation; while the Attic law allows the descendants of previously deceased daughters and sisters to inherit, by virtue of representative action, before the lateral male heirs of a more distant grade—brothers or uncles."

These deviations Mitteis endeavors, by means of an ingenious but exceedingly artificial demonstration, to trace back to the influence of Roman law, concluding thus: If we accept here the influence of the Roman law as reasonably certain, "then we need only do away with this correction in the Syrian law of inheritance to obtain at once a system which agrees with the Attic law of inheritance in its minutest details."

To which Müller retorts: Since the Attic succession, as Mitteis himself admits, is identical with that of the Bible and Talmud, then the original Syrian inheritance system, constructed by Mitteis, can after all be derived as well from the Jewish as from the Greek law of inheritance. And is not the Syrian inheritance system with the right of inheritance of the father more akin to the Jewish than the Greek law, which ignores the father's right of inheritance?

However, as to the deviation of the Syrian from the Attic-Jewish system, it is clearly impossible to consider the right of inheritance of the daughters as an innovation of Constantine in the fourth Christian century, as Mitteis

believes, since the putting of the daughters on an equal footing with the sons, as in the Laws of Hammurabi, was indigenous to Syria long before Constantine,[13] among the Sadducees, in Philo, and much later among the Karaites. Also the right of inheritance of the mother side by side with the sons and daughters can be demonstrated from the Code of Hammurabi, and is still extant among the Karaites.

3. Another demonstration of Mitteis is the so-called "theory of the pure seed." In paragraph one of the London MS. of the Code the following statement is to be found: "For the laws aim to get at the pure seed, and whosoever is the nearest of kin, they allot the heritage to him; in Roman law the term is *agnatus,* i. e. the near sex. When the near sex is extinct, the female sex, on a par with the soil, takes its place in Roman law known as *cognatus,* i. e. the sex posterior to the near sex." This reason for the preference of males is derived, according to Mitteis, "from a favorite sentence of Greek natural philosophy," for which he cites some examples.

In rebuttal, Müller maintained that the idea *per se* is quite evident, nor is it necessary to search for special sources to support it, for also in the Talmud, as he pointed out, the woman is designated as "natural soil." But since Mitteis' hypothesis was defended by his adherents even afterwards on the basis of the "theory of pure seed,"[14] Müller with greater force proceeded to hammer away at this theory and to demolish it completely.[15] To start with,

[13] See esp. Halévy in *Revue Sémitique,* 1905, p. 373, f., and Müller in *WZKM.,* XIX, p. 389-391.

[14] See *Deutsche Literaturzeitung,* 1906, column 499; comp. also J. Karst, *Das Armenische Rechtsbuch,* II, p. 174.

[15] *Semitica, sprach-und rechtsvergleichende Studien,* I (1906), p. 30-34.

the expression "pure seed" is doubtful, for in the Syrian text דכיא , meaning "pure," can easily be a miswriting from דכריא, meaning "male"—a supposition which is made probable by the contrast: the *female* sex. However, the Greek passages cited by Mitteis show no traces of "pure seed," and in only one instance, already quoted by Bruns and derived from Aeschylus, is there a bare inkling of the comparison of woman to the soil. Against this we have the testimony of the Amarna letters which prove that as far back as 1500 B. C. this comparison had become proverbial in Syria. In these letters, Abd-Ashirta, a Syrian chieftain, writes twice to the King of Egypt: "My field is like a woman that has no husband, for it has not been cultivated."

This retort was effective. One of the earlier followers of Mitteis' theory broke away from it almost expressly,[16] and even in the newest attempt by the school of Mitteis to save the master's hypothesis concerning the Syro-Roman Code[17]—about which I shall speak later—the theory of "pure seed" is absolutely ignored.

The system of intestate inheritance in the code, which was designated by Mitteis himself as the "only decisive point," gave way to the attack of Müller, and so the question was decided in favor of Oriental influence. Now that the decisive battle was over, Müller could in all tranquility of mind proceed to defend his previous assertions concerning the other non-Roman ingredients of the Syro-Roman Code, being able to strengthen his position through

[16] J. Karst, *Grundriss der Geschichte des armenischen Rechtes,* II, p. 32, note 18 (reprint from the *Zeitschrift für vergleichende Rechtswissenschaft,* XX (1907).

[17] J. Partsch, "Neue Rechtsquellen der nestorianischen Kirche," *Zeitschrift der Savigny-Stiftung,* XXX, Romanistische Abt.

arguments from manuscripts of the Code, which had been discovered in the mean time.

His last attack on Mitteis' hypothesis Müller accomplished by proving that even if the Code is based on a Greek archetype, nothing is gained for the Hellenistic origin of its non-Roman elements. The proof is convincing. The striking expressions and turns of speech, which should be Greek, are partly also Semitic, thus proving nothing; partly only Semitic and decidedly foreign to the Greek, thus proving the Semitic influence.[18]

To be sure, Müller's thesis still called forth a few attacks here and there,[19] but these attacks were made with inefficient weapons, since the assailants marshaled not their independent arguments, but chiefly relied upon such as had been expressed in the article of Mitteis, without taking into consideration Müller's poignant criticism and counter-proofs. Nothing essentially new could be brought forth against Müller's thesis. The most potent objection to it is the improbability of the argumentation from the practice of the Karaites, who did not come into existence before the eighth century. But this objection has no value whatsoever. In the first place, the argumentation from the practice of the Karaites in Müller's demonstration, although engaging a large space, is after all not of such weightiness that with it the real proof stands and falls. It only serves the purpose of a useful luxury. In the second place, the Karaitic traditions actually go back to the Sadducees—a circumstance which Müller himself did

[18] Comp. *Deutsche Literaturzeitung*, 1906, column 697, and *WZKM.*, XX, p. 129.

[19] Rabel in *Deutsche Literaturzeitung*, 1906, p. 498; Müller's refutation *ibid.*, p. 696 ff.; *WZKM.*, XX, p. 125-130; *Semitica*, II, p. 56, 61.

not urge resolutely, but which indeed was established long ago.[20]

Müller's thesis and its proofs were accepted by Joseph Kohler wholly and without reserve. In his essay[21] published after Müller's articles he agrees point after point with Müller's deductions,[22] and also adds the evidence of one more coincidence in the Syrian Code and that of Hammurabi. Such additional attestations from Semitic law were produced afterwards also by other men,[23] so that Müller's thesis gathered strength from day to day.

It is extremely characteristic of the convincing power of Müller's argumentation, that even such an ardent and convinced adherent of Mitteis' hypothesis as Joseph Karst, who thinks that Mitteis has "defended splendidly the Greek legal character" of the Syrian Code and that his theory "as a whole and in its chief features could not be refuted peremptorily"—that even he admits the following:

"Müller's ingenious inductions have shed light on this domain, marking an advance in so far as they oppose to the rugged Hellenistic theory the *irrefutable fact*[24] of the existence of a national Syro-Semitic element in the laws of the Syrian Code. It is the lasting merit of Müller's investigations into the Syrian Code to have recognized and

[20] See Harkavy in the Hebr. translation of Graetz's *Hist. of the Jews*, III, p. 495-469, 511; comp. also *ibid.*, p. 501-503.

[21] *Zeitschr. für vergleichende Rechtswissenschaft*, XIX, p. 103 ff.

[22] Comp. Müller in the *Anzeiger der Kais. Akad.*, April 25, 1906, *Semitica*, II, p. 57-61; comp. also Kohler in *Zeitschr. für vergl. Rechtswissenschaft*, XIX, p. 418.

[23] Comp. Aptowitzer, "Hammurabi and Syrian-Roman Law," in the *JQR.*, 1907, p. 606-610; Aptowitzer, *Die syrischen Rechtsbücher und das mosaisch-talmudische Recht. passim;* comp. this REVIEW, New Series, I, p. 218 f.; comp. also Freund, "Zur Geschichte des Ehegüterrechtes bei den Semiten" (*Sitzungsberichte der Kais. Akad.*, 1909, Bd. 162).

[24] Italicized by me.

elucidated the connection and primitive relation existing between the non-Greek ingredients of the Code and the Laws of Hammurabi."[25]

Now it is striking that Robert v. Mayr, in a review of our question in his inaugural lecture delivered at the University of Prague, fails to mention the fact that Kohler, otherwise Müller's opponent, has in this controversy accepted completely the point of view of Müller, and that Karst, a convinced representative of Mitteis' theory, has yielded in so many points to its opponent. Nor does it correspond to facts when v. Mayr thinks, that the point of view of Mitteis "does not seem shaken by the results of the newest investigation." This assertion indeed seems to be in contradiction with his previous remarks in the *Wiener Abendpost*, 1904, p. 349.[26]

Incomparably more important and significant than the direct confirmation through new proofs in detail, is the indirect verification which Müller's theory received through a circumstance which became known later, that the development of law in the Christian Orient was influenced by Jewish law in a powerful manner unparalleled in the history of jurisprudence. This fact could be ascertained after a study of the Armenian law and the codes of three Syrian patriarchs.

That the Mosaic law was incorporated in the Armenian law was known long ago. Already F. Bishoff called attention to this fact in 1862 in his work on the Armenian law.[27] That also traces of Talmudic influence are to be

[25] *Grundriss der Geschichte des armenischen Rechtes*, II, p. 97.

[26] Comp. Aptowitzer in *WZKM.*, 1909, p. 392, n. 2.

[27] "Das alte Recht der Armenier in Lemberg," *Sitzungsberichte der Kais. Akad.*, Bd. XL.

found in the Armenian Code was made evident afterwards by Joseph Kohler[28] and Joseph Karst, the editor of the Armenian Code.[29] However, it was D. H. Müller who recognized and established beyond any shade of doubt the real magnitude and potency of the Mosaic-Talmudic influence on the old Armenian Code,[30] and also the great weight and full significance that such an influence carries with it. Müller gathered and arranged the citations from the old Armenian Code of Mechitar Gosch, the Armenian bishop of the twelfth century, found scattered in Karst's commentary on the Middle Armenian Code, and after a thorough investigation established the following:

The redactor of the code "excerpted with great skill, the books of Exodus, Leviticus, Numbers, and Deuteronomy, and up to a certain point retained the order of the Pentateuch." These excerpts were not made by Gosch himself; he found well-arranged Pentateuchal excerpts already in existence.[31] "The glosses, likewise, accompanying the Bible-texts, presuppose a deep and penetrating knowledge of the Talmudic-Rabbinic exegesis and jurisprudence, which knowledge must already have been deep-rooted and far-reaching. The Talmudic-Rabbinic currents which make themselves evident through the whole work, as far as the adopted Mosaic law is involved, point not alone to a thorough knowledge of the Talmudic-

[28] "Das Recht der Armenier" in *Zeitschr. für vergleichende Rechtswissenschaft*, VII, 1887, p. 385-436.

[29] *Sempadscher Kodex aus dem 13. Jahrh. oder mittelarmenisches Rechtsbuch*, Strassburg 1905, 2 volumes (vol. II commentary).

[30] *Semitica, sprach-und rechtsvergleichende Studien*, II, p. 1-54 (*Sitzungsberichte der Kais. Akad.*, 1906).

[31] My exception to this assertion, in *JQR.*, 1907, p. 613, I have abandoned, proofs having accumulated since to establish the truth of the assumption; comp. *WZKM.*, XXI, p. 257, n. 3.

Rabbinic literature, but also to their early transplantation on Armenian soil. The authoritative recognition of the Code can only be explained when we assume that the elements used by Gosch were already at a much earlier date not only taught in the ecclesiastical schools, but deep-rooted in the public consciousness of law and order."

As to the time and cause of the adoption of the Mosaic-Talmudic law in Armenia, no positive facts were available to Müller, and he could only advance a well-founded hypothesis, which in its main lines was sufficient to explain the singular phenomenon. He starts out with the following fact:

At the fifth synod of Duin in the year 645 the priesthood and the benefices were declared to be hereditary. Then we read at the conclusion of the respective canon: "The foregoing statute from the times of the Roman king Heraclius (610) and the Persian king Chosrow (*c.* 590) shall have force also here. But as to the practice before their times, it shall not be touched here, for we know nothing definite about it."

Now two circumstances are very striking: (1) the decree that this canon shall have retroactive force; (2) the ignorance of the usage in force before the times of the above-named rulers. The latter is particularly strange since in this synod there must have been assembled bishops of the age of sixty and seventy, who as contemporaries must have had a knowledge of such practice. To which Müller says:

"From this mysterious conduct on the one hand, as from the illegal decree about the retroactive force of the canon on the other, it is to be seen that a bold stroke had been perpetrated here, an arbitrary act which they

wished to carry through, but which they endeavored to conceal as much as possible... At this synod the conflicting interests may have clashed together: the interests of the Church, which sought to free herself from any considerations of clan and family, and the interests of the old priestly families, who in the days of paganism had sought refuge in the fold of the priesthood. The power of the old priestly families was stronger than that of the Church representatives, and consequently the former remained victorious. In this encounter the pagan priestly families found allies among the Jews, who effected a compromise between the Church and the old families on the basis of the Mosaic institution of the Levitical order. Through this alliance it became possible for the Armenian Church to adopt the Mosaic law, her clergy having also a strong personal interest in this adoption. Thus alongside with the hereditary succession of the priesthood and the benefices animal sacrifice also was retained or adopted, manifesting herein the same combination of pagan customs and Mosaic institutions—and here too the "doctores Judaei" are expressly mentioned as those who exerted an influence on the regulation of the sacrificial cult. The priests gained considerably from this last adoption, for they received the same offerings which were prescribed in the Pentateuch as belonging to the priests. Also in other respects they knew how to claim for themselves all the prescriptions in the Mosaic law which aimed to preserve and defend the honor of the priesthood, and to acquire a position for the patriarch which could contend with that of the king. To establish these rites on a firm basis, the "doctores Judaei" were necessary, and these, to

be sure, were consulted, and thus the Mosaic jurisprudence was studied, drawn upon, and interpreted."

Müller's investigations were then continued and perfected by the present writer.[32]

With regard to the history of the adoption I was able to supplement and to strengthen Müller's hypothesis through the additional evidence, that Armenia, which in the days of yore had no distinct and well-marked national laws and hence was fit to become a receptive soil for foreign codes, was exposed centuries long to the influence of the Mosaic and Mosaic-Talmudic law, and that there existed close relations between Armenia on the one hand and the Jewish population of Armenia and of adjacent Babylonia on the other, by which it becomes clear that—as I have established—even a long time before the official adoption at the synod of Duin, alluded to by Müller, in the fourth century already, Mosaic-Talmudic law was very influential in Armenia. I was also able to point out that the Pentateuchal excerpts, presupposed by Müller merely on logical grounds, actually existed in the days of Mechitar Gosch and are still in existence.

As to the adoption itself, I have proved the existence in the Code of Mechitar of a number of agreements with, and borrowings from, the Talmudic law, which Müller had not recognized, and I have established that even in the Middle Armenian Code and in the more recent versions of the old Armenian Code many Talmudic elements are found.[33]

[32] "Zur Geschichte des armenischen Rechtes," *WZKM.*, XXI, p. 251-267. "Beiträge zur mosaischen Rezeption im armenischen Recht" (*Sitzungsberichte der Kais. Akad.*, Bd. 157), Wien 1907.

[33] Comp. this REVIEW, New Series, I, p. 221 f.

It must be admitted that the Old Armenian Code of Mechitar Gosch contains also Roman-Hellenistic law, but not in the measure which Mitteis and Karst have assumed. For many of their derivations from Greek law have proved to be unjustified and untenable. But even Karst, who is inclined to exaggerate the Roman-Greek influence, admits that the influence of the Mosaic law was much more powerful and much more significant than the Roman-Hellenistic, that in the Code of Mechitar Mosaic law exerts itself with an enduring vigor and with "an import unique in the history of jurisprudence."[34]

As to the place of currency of the old Armenian Code, it is known that up to within a recent time it was in uninterrupted legal force in Armenia itself, forming a guide for the episcopal courts, that it also underwent different redactions and spread beyond the confines of the country, finding entrance in the colonies, Poland, and the Crimea, as well as among the adjacent Caucasian tribes.[35] "The Code," remarks Kohler, "has a very significant history. It followed the Armenians on their military expeditions—it followed the Armenians far away, wherever their commercial spirit carried them; it paved its way to neighboring peoples."[36]

As in Armenia and in the Caucasus, Jewish law was of potent influence and of quite an eminent import also for the legal systems of the Persian, Babylonian, and Syrian Christians, i. e. for the Nestorian Church. This is shown particularly in the codes of the Nestorian patriarchs Ḥenanisho, Timothy, and Jesubarnun of the seventh,

[34] *Grundriss der Geschichte des armenischen Rechts,* I, p. 17.

[35] Comp. Karst, *Grundriss,* I, p. 36-40, 99.

[36] Kohler in *Zeitschr. für vergl. Rechtsw.,* VII; comp. Karst, *l. c.,* p. 36.

eighth, and ninth century, published by Ed. Sachau, as I have established conclusively through my examination of those codes.

These codes have already been treated by me in this REVIEW.[37] I only wish to emphasize here that my examination was induced by D. H. Müller, who through a mere cursory glance and hasty perusal of the codes had already recognized that there must be points of contact between them and the Jewish law.

Contemporary with my investigation, J. Partsch instituted an enquiry into the nature of the codes of the Nestorian patriarchs in volume XXX of the *Savigny Zeitschrift*,[38] and reached a conclusion directly contradictory to mine. According to Partsch, the codes as a whole contained Roman-Greek law; in addition there are also specifically eccelesiastical and legal maxims and only a few traces of the old Syrian common-law.

But Partsch also declares the Nestorian Codes to be a direct crucial test for Mitteis' hypothesis concerning the Syro-Roman Code, expressing the assurance that Mitteis' hypothesis has stood this test splendidly:

"Rarely has a new theory in the history of jurisprudence as that of Mitteis on the Hellenistic character of the civil law in the Syrian Code been subjected to a more searching test as to its truth. It is therefore an inward gratification to the writer of these lines to be able to give first utterance to the fact, that Mitteis' doctrine of the influence of Hellenistic law on the Syrian legal system

[37] New Series, I, p. 225 f.

[38] "Neue Rechtsquellen der nestorianischen Kirche," *Zeitung der Savigny-Stiftung für Rechtsgeschichte*, Bd. XXX, Romanist. Abt. Reprint.

receives ample new corroboration at the hand of these new sources."

Against this I have proved in a long article in the *Wiener Zeitschrift für die Kunde des Morgenlandes*[39] that Partsch's assertions and deductions from Greek jurisprudence are devoid of truth and untenable throughout, that the remote similarities, inklings, suggestions, and reminiscences, which should prove the Greek invasion, have no value whatsoever against the perfect agreements which are furnished by the Jewish law—a law which centuries throughout and still at the time of our patriarchs was in good practice in Babylonia, the home of the Nestorian Codes, while the Greek-Roman law could have been known there from the literature at the utmost.

The difference between Partsch's demonstration and my own may here be demonstrated by two examples:

1. P., p. 14: "In the law of conjugal property mention is still traceable of the decision of the Justinian Nov. 97 concerning the equality of *dos* and *donatio,* which apparently has long since gone out of practice (Timothy 62)."

That is correct. In the same paragraph, however, Timothy says: "But we have determined, that the δωρεά shall amount to no more than 400 *zuz,* by which we have in mind rich people."

Now already the fact of determining δωρεά by a fixed sum is known from no other but the Talmudic law; but, more than that, the sum of 400 *zuz* with its restriction to *"rich people"* agrees *verbatim* with the statement of the Babylonian Talmud that the δωρεά —usually 200 *zuz*— amounted to 400 *zuz* in the case of wealthy families. In

[39] *WZKM.*, XXIV (1910), p. 180-224. *Die Rechtsbücher der syr. Patr. und ihre Quellen.*

the first half of the ninth century, hence exactly during the lifetime of Timothy, the δωρεά was generally in use in some regions of Babylonia to the amount of 400 *zuz*.[40]

2. P., p. 11: "The patriarch (Timothy) here vindicates for the daughter or sister a right of inheritance of one-tenth of the estate, in case she is not provided sufficiently with a dowry or some other endowment from the father's estate. In the same wise shall the wife after the death of her husband, in case she leaves the household, receive, besides her δωρεά and φερνή, one-tenth the property acquired during the marital state, or else one-tenth of the property left. These decimals are arbitrary inventions of Timothy (§ 58)."

Upon which I have had the following to say:[41]

With regard to the portion of the daughter, the decisions of the patriarch agree with the decrees of the Talmudic law in an altogether remarkable manner. Also according to the Talmud the daughter receives as dowry a tenth of her father's estate, from the heirs as well as from her father himself. Besides, the heirs are in duty bound to allow the daughter a suitable alimony. And also here the tenth part is not the original and is only provided for the cases where it is unknown how much the father would have given to his daughter.

[40] My treatise, p. 84.

[41] *Die syr. Rechtsbücher und das mosaisch-talmudische Recht, p. 72 f.*

Timothy § 52:	Talmudic law:
"When his parents have died, his property is divided in equal parts among his brothers, while the sisters get a tenth part of the property in addition to their φερνή, if their father has not (provided) for them according to his means and neither in life nor in death has bestowed upon them (what is due to them)."	"The daughter that is supported by her brothers, gets a tenth part of the estate, but only when the father cannot be estimated (concerning the amount which he would have given to his daughter), but when this amount can be estimated, we are to be guided by this estimate."

The tenth part as the portion of the daughter in the estate of the father is thus no "arbitrary invention" of Timothy, but a direct derivation from the Talmudic law and Jewish usage. That the tenth part for the widow and the divorced wife is only a further development of this usage scarcely needs any mention here.